

**Rich, Christopher W. (Perkins Coie)**

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**From:** Feldman, Stephen (Perkins Coie)  
**Sent:** Sunday, February 02, 2014 1:24 PM  
**To:** Pahl, Douglas (Perkins Coie); Rich, Christopher W. (Perkins Coie)  
**Subject:** FW: Escrow Agreement  
**Attachments:** 0509\_001.pdf

FYI

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**From:** Feldman, Stephen (Perkins Coie)  
**Sent:** Sunday, February 02, 2014 1:23 PM  
**To:** 'Norton, Kelly'; 'Yackulic, Ted'; 'tyackulic@gmail.com'; [Frederick.Phillips@USDOJ.GOV](mailto:Frederick.Phillips@USDOJ.GOV)  
**Cc:** Justin D. Leonard ([jleonard@ml-llp.com](mailto:jleonard@ml-llp.com))  
**Subject:** RE: Escrow Agreement

All, attached is a fully-executed copy of the Escrow Agreement.

Ted, please send the lien release at your earliest opportunity.

Thanks,  
Stephen

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**From:** Norton, Kelly [<mailto:Kelly.Norton@ctt.com>]  
**Sent:** Friday, January 31, 2014 5:06 PM  
**To:** Feldman, Stephen (Perkins Coie); 'Yackulic, Ted'  
**Cc:** [Frederick.Phillips@USDOJ.GOV](mailto:Frederick.Phillips@USDOJ.GOV); Justin D. Leonard ([jleonard@ml-llp.com](mailto:jleonard@ml-llp.com))  
**Subject:** RE: Escrow Agreement

Stephen please see attached with my signature and the original is on its way to you for delivery on Monday.  
Thanks again~

Kelly M. Norton  
Senior Escrow Officer/Commercial Division  
Chicago Title Company  
1211 SW Fifth Avenue, Suite 2130  
Portland, OR 97204  
Direct: 503-973-7402  
Toll Free: 866-847-7400  
Fax: 503-248-0324  
[Kelly.Norton@CTT.COM](mailto:Kelly.Norton@CTT.COM)

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**From:** Feldman, Stephen (Perkins Coie) [<mailto:SFeldman@perkinscoie.com>]  
**Sent:** Friday, January 31, 2014 4:41 PM  
**To:** 'Yackulic, Ted'; Norton, Kelly  
**Cc:** [Frederick.Phillips@USDOJ.GOV](mailto:Frederick.Phillips@USDOJ.GOV); Justin D. Leonard ([jleonard@ml-llp.com](mailto:jleonard@ml-llp.com))  
**Subject:** RE: Escrow Agreement

FYI, I will have all of the Seller signatures within the next hour or so.

Kelly, Please advise as to Chicago Title's signature. Thanks.

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**From:** Yackulic, Ted [<mailto:yackulic.ted@epa.gov>]  
**Sent:** Friday, January 31, 2014 3:59 PM  
**To:** Feldman, Stephen (Perkins Coie); [Kelly.Norton@CTT.COM](mailto:Kelly.Norton@CTT.COM)  
**Cc:** [Frederick.Phillips@USDOJ.GOV](mailto:Frederick.Phillips@USDOJ.GOV); Justin D. Leonard ([jleonard@ml-llp.com](mailto:jleonard@ml-llp.com))  
**Subject:** RE: Escrow Agreement

Kelly and Steve,

Attached is an EPA signed copy of the escrow agreement. I'll send a scanned version of the lien release form after I receive a copy of the executed escrow agreement.

Ted Yackulic, Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Phone: 206-553-1218  
[yackulic.ted@epa.gov](mailto:yackulic.ted@epa.gov)

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**From:** Feldman, Stephen (Perkins Coie) [<mailto:SFeldman@perkinscoie.com>]  
**Sent:** Friday, January 31, 2014 2:37 PM  
**To:** [Kelly.Norton@CTT.COM](mailto:Kelly.Norton@CTT.COM); Yackulic, Ted  
**Cc:** [Frederick.Phillips@USDOJ.GOV](mailto:Frederick.Phillips@USDOJ.GOV); Justin D. Leonard ([jleonard@ml-llp.com](mailto:jleonard@ml-llp.com))  
**Subject:** Escrow Agreement

Kelly and Ted,

Attached is an execution copy of the Escrow Agreement.

Please have an authorized representative of Chicago Title and EPA, respectively, sign the Agreement, and please then return to me the executed signature page. Once all the parties and EPA have signed, I will put together a fully-executed copy of the Agreement and circulate it.

Thanks everyone for your cooperation and effort in getting this done.

Best,  
Stephen

**Stephen M. Feldman | Perkins Coie LLP**  
1120 N.W. Couch Street  
Tenth Floor  
Portland, OR 97209-4128  
PHONE: 503.727.2058  
FAX: 503.346.2058  
E-MAIL: [sfeldman@perkinscoie.com](mailto:sfeldman@perkinscoie.com)



Please consider the environment before printing this email. Thank you.

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## ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Agreement") is entered into as of January 31, 2014, by and among **DAVID L. ELLIS, PAMELA L. ELLIS, AND FAROUK H. AL-HADI**, the owners as tenants in common of the property located at 140 Queen Avenue SW, Albany, Oregon (collectively, "Seller"), and **CHICAGO TITLE COMPANY** ("Escrow Holder"), and for the benefit of **THE U.S. ENVIRONMENTAL PROTECTION AGENCY** ("EPA" or "Beneficiary").

### RECITALS

1. Seller intends to sell the property located at 140 Queen Avenue SW, Albany, Oregon (the "Property") to Pacific Cast Technologies, Inc. ("Buyer") pursuant to that certain Purchase and Sale Agreement dated October 17, 2013, as amended by the First Amendment to Purchase and Sale Agreement dated January 3, 2014.
2. As part of the process of resolving any and all liability that Seller has to EPA for environmental response costs incurred by EPA in connection with the Property, Seller shall deposit, upon closing, \$135,000 of the proceeds of the sale of the Property to Buyer into an escrow account (the "Escrow Account") with Escrow Holder.
3. It is the expectation of the parties to this Agreement that additional funds in the amount of \$115,000 will be deposited into the Escrow Account by the bankruptcy estate of Absorbent Technologies, Inc., by and through its duly appointed Chapter 7 Trustee Kenneth S. Eiler, (the "Estate").
4. Seller and EPA desire that Escrow Holder receive, hold and disburse the funds in the Escrow Account in accordance with the terms, conditions and provisions of this Agreement, and Escrow Holder is willing to do so.

### AGREEMENT

1. Appointment of Escrow Holder. Escrow Holder is hereby appointed by Seller and EPA as the escrow agent to receive, hold and disburse the funds in the Escrow Account in accordance with the terms and conditions hereof.
2. Acceptance by Escrow Holder. Subject to the terms and conditions contained herein, Escrow Holder agrees to hold and disburse the funds in the Escrow Account pursuant to this Agreement. Any reasonable charges and costs incurred by Escrow Holder for establishing and maintaining the escrow established hereby shall be paid by Seller.
3. Instructions for Escrow Holder. Escrow Holder shall take the following steps: (i) set up the Escrow Account; (ii) hold back \$135,000 from the proceeds of the sale of the Property to Buyer and deposit that sum into the Escrow Account; (iii) accept a deposit of an additional \$115,000 into the Escrow Account, with such payment coming from the Estate unless

Seller provides notice (in accordance with Section 5 of this Agreement) that the additional \$115,000 will be paid by another source(s); (iv) accept delivery into escrow of the final and fully-executed version of a document from EPA that is entitled "Settlement Agreement for Recovery of Response Costs In the Matter of: Absorbent Technologies Site, Albany, Linn County, Oregon" (the "Settlement Agreement"); and (v) once the Escrow Account has been funded in the amount of \$250,000 and once the Settlement Agreement has been received from EPA into escrow and Escrow Holder has received written confirmation (in any form, including but not limited to, email) from Seller (or Seller's counsel) that the Settlement Agreement is the correct document, then Escrow Holder shall within two (2) business days release the \$250,000 to EPA and also shall deliver the Settlement Agreement to Seller. The disbursement of the \$250,000 to EPA shall occur via wire transfer and shall be done in accordance with the wiring instructions attached hereto as Schedule 1, unless EPA otherwise notifies Escrow Holder (in accordance with Section 5 of this Agreement). In the event that the Escrow Account is not funded in the amount of \$250,000, then the Escrow Holder shall continue to maintain the Escrow Account without making any distributions and await further joint, written instructions from Seller and EPA.

4. Certain Rights, Duties, Liabilities, Privileges and Immunities of Escrow Holder. Seller and Escrow Holder agree that the following provisions shall control with respect to the rights, duties, liabilities, privileges and immunities of Escrow Holder.

(a) In the event of any disagreement between or among any of the parties to this Agreement or the Beneficiary of this Agreement, or between them or any of them or any other person or entity resulting in adverse claims or demands being made in connection with the subject matter of the escrow established hereunder, or in the event that Escrow Holder, in good faith, is in doubt as to what action it should take hereunder, Escrow Holder may, at its option, refuse to comply with any claims or demands on it, or refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and, in any such event, Escrow Holder shall not be or become liable in any way or to any person or entity for its failure or refusal to act, and Escrow Holder shall be entitled to continue to refrain from action until all differences shall have been adjusted and all doubt resolved by agreement among all of the interested persons or entities, and Escrow Holder shall have been notified thereof in writing signed by all such persons or entities.

(b) Escrow Holder shall not offset, withhold from disbursement, or otherwise seek to use any of the funds in the Escrow Account for its own benefit, whether or not a debt is owed to Escrow Holder by any party hereto.

5. Notices. All notices and other communications hereunder shall be provided by either personal delivery or email transmission at the addresses set forth below (or at such other address as a party or EPA may hereafter designate for itself by notice to the other parties as required hereby):

To Seller: David L. Ellis  
Capacity Commercial Group, LLC  
805 SW Broadway, Suite 700  
Portland, OR 97205  
Email: DEllis@capacitycommercial.com

With Copy to: Stephen M. Feldman  
Perkins Coie LLP  
1120 N.W. Couch St., Tenth Floor  
Portland, OR 97209  
Email: sfeldman@perkinscoie.com

To EPA: Ted Yackulic, Assistant Regional Counsel  
U.S. Environmental Protection Agency, Region 10  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
Email: yackulic.ted@epa.gov

If to Escrow Holder: Chicago Title Company  
1211 SW Fifth Avenue, Suite 2130  
Portland, OR 97204  
Attn: Kelly M. Norton  
Email: Kelly.Norton@ctt.com

Any notice or authorization delivered to Escrow Holder by Seller shall concurrently be delivered to EPA in accordance with the foregoing. Any notice or authorization delivery to Escrow Holder by EPA shall concurrently be delivered to Seller in accordance with the foregoing.

6. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the Beneficiary hereof and their respective heirs, legal representatives, successors and assigns.

7. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which for all purposes is to be deemed an original, and all of which constitute, collectively, one agreement. An electronic copy of a party's signature is valid and binding to the same extent as an original signature.

8. Governing Law. This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Oregon.

*[Signatures begin on the following page.]*

IN WITNESS WHEREOF, the parties and the Beneficiary have executed and delivered this Agreement as of the date first above written.

**SELLER:**

\_\_\_\_\_  
David L. Ellis

\_\_\_\_\_  
Pamela L. Ellis

\_\_\_\_\_  
Farouk H. Al-Hadi

**ESCROW HOLDER:**

CHICAGO TITLE COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EPA:**

U.S. Environmental Protection Agency

By: \_\_\_\_\_

for Name: \_\_\_\_\_

Its: \_\_\_\_\_

**SCHEDULE 1**  
**EPA's Wiring Instructions**

Wire transfers to EPA shall be made through the Federal Reserve Bank of New York using the following information:

ABA: 021030004

Account Number: 68010727

SWIFT address: FRNYUS33

33 Liberty Street

New York, NY 10045

Field Tag 4200 of the Fedwire message should read: D 68010727 Environmental Protection Agency

Additionally, Escrow Holder shall include the following references on the wire transmission:

- Site Name: Absorbent Technologies Site;
- Site ID No.: MT10; and
- EPA Docket No.: 10-2014-0057.

Additionally, upon the wiring of funds to EPA under this Agreement, Escrow Holder shall send notice of the payment, including a copy of the wire transmission, by email to [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov), and by mail to:

EPA Cincinnati Finance Office  
26 Martin Luther King Drive  
Cincinnati, Ohio 45268